

Case 3:11-cv-00461-HDM -VPC Document 75 Filed 02/16/12 Page 1 of 8

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| COUNSEL/PARTIES OF RECORD | |
| FEB 17 2012 | |
| CLERK US DISTRICT COURT | |
| DISTRICT OF NEVADA | |
| BY: _____ | DEPUTY. |

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

12 NATIONAL RAILROAD PASSENGER
 13 CORPORATION,

14 Plaintiff,

15 v.

16 JOHN DAVIS TRUCKING COMPANY,
 17 INC., a Nevada corporation,

18 Defendant.

19 JOHN DAVIS TRUCKING COMPANY,
 20 INC., a Nevada Corporation,

21 Counterclaimant,

22 v.

23 NATIONAL RAILROAD PASSENGER
 24 CORPORATION, UNION PACIFIC
 25 RAILROAD COMPANY, and DOES 1-5,

26 Counter-Defendants.

Case No. 3:11-cv-00461 HDM VPC

**JOINT CASE MANAGEMENT
 STATEMENT**

Date: February 21, 2012

Time: 9:00 a.m.

Ctrm: 1

Judge: The Honorable Valerie P. Cooke,
 U.S. Magistrate Judge

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1 TO THE HONORABLE VALERIE P. COOKE, U.S. MAGISTRATE JUDGE:
 2 COME NOW the parties who have appeared in this action and submit the following Joint
 3 Case Management Statement pursuant to the Minutes of the Court filed on November 8, 2011
 4 (Doc 60).

5 **CASE MANAGEMENT REPORT**

6 Issues Pertaining to Locomotive Videos and Event Recorder Data

7 On January 17, 2012, counsel for John Davis Trucking Company raised the following
 8 two issues with counsel for National Railroad Passenger Corporation ("Amtrak"). Below is a
 9 description of the two issues and their status:

10 1. Locomotive Videos:

11 John Davis Trucking Company seeks the "original" locomotive video images because
 12 it claims the encryption format in which they were produced to it makes meaningful
 13 analysis of the video impossible. Amtrak disagrees. Furthermore, according to John
 14 Davis Trucking, the encryption software takes over all operations on the computer to
 15 which the video disc is installed, and any attempt to analyze the video images results
 16 in an error message and the cessation of the play. Amtrak disagrees. John Davis
 17 Trucking also claims the video cannot be stopped and started frame by frame and that
 18 there is no manner in which to analyze the speed rate at which the images were
 19 recorded or are being played. It further claims the image quality of the videos is poor,
 20 particularly given the high resolution quality of the camera system on-board the
 21 locomotives. John Davis Trucking claims critical information about the position of
 22 the crossing gates is not visible. It believes these difficulties appear due to the
 23 encryption software into which Amtrak or its subcontractor placed the video images.
 24 Amtrak disagrees.

25 John Davis Trucking's Additional Claims:

26 John Davis Trucking claims there is no way to verify that the video in question is
 27 genuine. Amtrak disagrees. It claims the encrypted copy provided to defendant
 28 includes only Amtrak's logo and the date of the accident. It also claims it is

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1 impossible for a forensic specialist to analyze the video for genuineness or for any
 2 other feature of importance, such as a frame-by-frame study of the video at the times
 3 preceding, during, and following the incident. John Davis Trucking further claims the
 4 disc prevents any forensic analysis which could detect tampering if such has occurred.
 5 Amtrak disagrees. It argues the disc provided by Amtrak is not a video file in any
 6 recognized format. It is an ".exe" file that contains its own software which runs the
 7 disc and supersedes the computer's controls. It claims Amtrak has thus far refused to
 8 provide the video file from which the encrypted disc was made, or the video data as
 9 originally recorded by Amtrak's on board digital video recorder. According to John
 10 Davis Trucking, the encryption provided to John Davis Trucking was made on
 11 November 1, 2011, shortly after the Court's order directing that the video be produced.
 12 John Davis Trucking claims that necessarily means that the encryption was made from
 13 a video file in native form which could, and should, have been produced. According
 14 to John Davis Trucking, the encrypted disc wholly fails to comply with the
 15 requirements of FRCP 34, particularly in light of the 2006 Amendment thereto. (See
 16 the Official Commentary to that Amendment.) It alleges the disc Amtrak produced is
 17 of such poor quality it is impossible to determine whether the gates were down for the
 18 full five seconds minimum time preceding arrival of the train at the crossing, as
 19 required by federal regulation. Amtrak disagrees with all the contention above.

20 Status:

21 As noted above, Amtrak disagrees with John Davis Trucking's assessment of the
 22 locomotive video. Notwithstanding, the parties have met and conferred and are
 23 continuing to meet and confer on these issues. Amtrak is currently investigating
 24 whether there is a better quality version of the locomotive videos in existence. Based
 25 on the information presently known to Amtrak's counsel, the locomotive video camera
 26 is set to record images at 30 frames per second. The multiple copies of the locomotive
 27 video provided to John Davis Trucking all display images at 30 frames per second.
 28 Amtrak is willing to display the video to the Court so that the Court may judge for

1 itself the quality of the video footage. Amtrak contends the video quality is very good,
2 and more importantly, conclusively shows that the crossing gates were down prior to
3 the lead locomotive entering the crossing. Given that the John Davis Trucking tractor
4 struck the fourth train car (the second car behind the two locomotives), the locomotive
5 mounted camera would never have captured the impact because the lead locomotive
6 had cleared through the crossing approximately 3-4 seconds before impact.
7 Nevertheless, Amtrak is working on obtaining an unencrypted copy of the locomotive
8 videos and has informed John Davis Trucking that it is working on obtaining this
9 copy. As to John Davis Trucking's contention regarding FRCP 34, Amtrak contends
10 FRCP 34 does not apply as Amtrak has not received any Request for Documents from
11 John Davis Trucking.

2. Event Recorder Data: John Davis Trucking Company also seeks the “original” event recorder data because it believes the event recorder device on-board both the lead and trailing locomotives are of a type that are susceptible to manipulation.

Status:

The parties have met and conferred on this issue and this issue has since been resolved. Amtrak has provided John Davis Trucking an additional copy of the event recorder data it previously sent, but with metadata showing the date and time the event recorder data were downloaded.

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2 | Request to Vacate Case Management Conference

3 The parties stipulate to vacate the Case Management Conference scheduled for February
4 21, 2012 at 9:00 a.m.

5 | DATED this 16th day of February, 2012.

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15 DATED this 16th day of February, 2012.

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RAILROAD COMPANY

DATED this 16th day of February, 2012.

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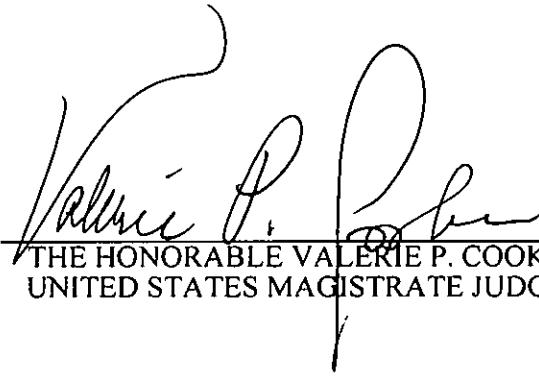
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1 **[PROPOSED] ORDER**

2 Per the parties Joint Case Management Statement, the Court hereby vacates the Case
3 Management Conference scheduled for February 21, 2012 at 9:00 a.m. in Courtroom 1.

4
5 IT IS SO ORDERED.

6 DATED: February 17, 2012

7 By: 

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9 THE HONORABLE VALERIE P. COOKE
10 UNITED STATES MAGISTRATE JUDGE
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